

Senate Bill No. 228

CHAPTER 657

An act to amend Sections 6710, 6714, 6715, 6736, 6736.1, 6755.1, 6780, 7804.1, 7806, 7810, 7815.5, 7830.1, 7833, 7835.1, 7837, 7841.1, 7850, 7850.1, 7852.1, 7872, 8710, 8741, 8741.1, 8761, and 8764 of, and to repeal Section 8753 of, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

SB 228, Figueroa. Geologists and geophysicists: professional engineers and land surveyors.

(1) Existing law establishes the Board for Professional Engineers and Land Surveyors in the Department of Consumer Affairs. Existing law requires the board to appoint an executive officer. Existing law authorizes the board to make and enforce rules and regulations that are reasonably necessary to carry out the provisions of law regulating land surveyors. Existing law provides that these provisions are to become inoperative and are repealed on July 1, 2006, and January 1, 2007, respectively.

This bill would instead make these provisions inoperative and repealed on July 1, 2008, and January 1, 2009, respectively.

Existing law makes various violations of the Professional Engineers Act a crime, including the practice or offer to practice by a person of civil, electrical, or mechanical engineering without authorization as provided by the act.

Because a violation of the provisions of the bill would be a crime, these provisions of the bill would impose a state-mandated local program.

(2) Existing law, the Geologist and Geophysicist Act, provides for the regulation of geologists and geophysicists by the Board for Geologists and Geophysicists, in the Department of Consumer Affairs. Under existing law, the provisions creating the board and authorizing the board to appoint an executive officer will become inoperative on July 1, 2006, and will be repealed as of January 1, 2007.

This bill would instead make these provisions inoperative and repealed on July 1, 2008, and January 1, 2009, respectively.

The bill would also change references to "registered geophysicist" and "registered geologist" to "professional geophysicist" and "professional geologist," respectively, in specified provisions.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 6710 of the Business and Professions Code is amended to read:

6710. (a) There is in the Department of Consumer Affairs a Board for Professional Engineers and Land Surveyors, which consists of 13 members.

(b) Any reference in any law or regulation to the Board of Registration for Professional Engineers and Land Surveyors is deemed to refer to the Board for Professional Engineers and Land Surveyors.

(c) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 2. Section 6714 of the Business and Professions Code, as amended by Section 2 of Chapter 48 of the Statutes of 2005, is amended to read:

6714. The board shall appoint an executive officer at a salary to be fixed and determined by the board with the approval of the Director of Finance.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 6715 of the Business and Professions Code is amended to read:

6715. The board shall compile and maintain, or may have compiled and maintained on its behalf, a register of all licensees that contains information showing the name, address of record, type of branch license, license number, the date the license was issued, and the date the license will expire.

SEC. 4. Section 6736 of the Business and Professions Code is amended to read:

6736. No person shall use the title, "structural engineer," or any combination of these words or abbreviations thereof, unless he or she is a licensed civil engineer in this state and unless he or she has been found qualified as a structural engineer according to the rules and regulations established for structural engineers by the board.

SEC. 5. Section 6736.1 of the Business and Professions Code is amended to read:

6736.1. (a) No person shall use the title, “soil engineer,” “soils engineer,” or “geotechnical engineer,” or any combination of these words or abbreviations thereof, unless he or she is a licensed civil engineer in this state and files an application to use the appropriate title with the board and the board determines the applicant is qualified to use the requested title.

(b) The board shall establish qualifications and standards to use the title “soil engineer,” “soils engineer,” or “geotechnical engineer.” However, each applicant shall demonstrate a minimum of four years qualifying experience beyond that required for licensure as a civil engineer, and shall pass the examination specified by the board.

(c) For purposes of this section, “qualifying experience” means proof of responsible charge of soil engineering projects in at least 50 percent of the major areas of soil engineering, as determined by the board.

(d) Nothing contained in this chapter requires existing references to “soil engineering,” “soils engineering,” “geotechnical engineering,” “soil engineer,” “soils engineer,” or “geotechnical engineer,” in local agency ordinances, building codes, regulations, or policies, to mean that those activities or persons must be registered or authorized to use the relevant title or authority.

SEC. 6. Section 6755.1 of the Business and Professions Code is amended to read:

6755.1. (a) The second division of the examination for registration as a professional engineer shall include questions to test the applicant’s knowledge of state laws and the board’s rules and regulations regulating the practice of professional engineering. The board shall administer the test on state laws and board rules regulating the practice of engineering in this state as a separate part of the second division of the examination for registration as a professional engineer.

(b) On and after April 1, 1988, the second division of the examination for registration as a civil engineer shall also include questions to test the applicant’s knowledge of seismic principles and engineering surveying principles as defined in Section 6731.1. No registration for a civil engineer shall be issued by the board on or after January 1, 1988, to any applicant unless he or she has successfully completed questions to test his or her knowledge of seismic principles and engineering surveying principles.

The board shall administer the questions to test the applicant’s knowledge of seismic principles and engineering surveying principles as a separate part of the second division of the examination for registration as a civil engineer.

It is the intent of the Legislature that this section confirm the authority of the board to issue registrations prior to April 1, 1988, to applicants based on examinations not testing the applicant’s knowledge of seismic principles and engineering surveying principles as defined in Section 6731.1.

SEC. 7. Section 6780 of the Business and Professions Code is amended to read:

6780. (a) A petitioner may petition the board for reinstatement or modification of penalty, including reduction, modification, or termination of probation, after the following minimum periods have elapsed from the effective date of the decision ordering the disciplinary action, or if the order of the board or any portion of it is stayed by a court of law, from the date the disciplinary action is actually implemented in its entirety:

(1) Except as otherwise provided in this section, at least three years for reinstatement of a certificate that was revoked or surrendered. However, the board may, in its sole discretion, specify in its order of revocation or surrender a lesser period of time that shall be at minimum one year.

(2) At least two years for early termination of a probation period of three years or more.

(3) At least one year for early termination of a probation period of less than three years.

(4) At least one year for reduction or modification of a condition of probation.

(b) The board shall notify the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and the petitioner and the Attorney General shall be given the opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(c) The board itself or an administrative law judge, if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision.

(d) The board may grant or deny the petition or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction or modification of the penalty.

(e) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(f) The board may, in its discretion, deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

(g) Judicial review of the board's decision following a hearing under this section may be sought by way of a petition for writ of administrative mandamus pursuant to Section 1094.5 of the Code of Civil Procedure. The party seeking to overturn the board's decision shall have the burden of proof in any mandamus proceeding. In the mandamus proceeding, if it is alleged that there has been an abuse of discretion because the board's findings are not supported by the evidence, abuse of discretion is

established if the court determines that the findings are not supported by substantial evidence in light of the whole record.

(h) The following definitions apply for purposes of this section:

(1) “Certificate” includes certificate of registration or license as a professional engineer; certificates of authority to use the titles “structural engineer,” “geotechnical engineer,” “soil engineer,” “soils engineer,” or “consulting engineer;” and certification as an engineer-in-training.

(2) “Petitioner” means a professional engineer or an engineer-in-training whose certificate has been revoked, suspended, or surrendered or placed on probation.

SEC. 8. Section 7804.1 of the Business and Professions Code is amended to read:

7804.1. Only a person registered as a geophysicist under the provisions of this chapter shall be entitled to take and use the title “professional geophysicist.” Only a person registered as a geophysicist and certified under the provisions of this chapter shall be entitled to take and use the title of a registered certified specialty geophysicist.

SEC. 9. Section 7806 of the Business and Professions Code is amended to read:

7806. A subordinate is any person who assists a professional geologist or professional geophysicist in the practice of geology or geophysics without assuming the responsible charge of work.

SEC. 10. Section 7810 of the Business and Professions Code is amended to read:

7810. The Board for Geologists and Geophysicists is within the department and is subject to the jurisdiction of the department. Except as provided in this section, the board shall consist of eight members, five of whom shall be public members, two of whom shall be geologists, and one of whom shall be a geophysicist.

Each member shall hold office until the appointment and qualification of the member’s successor or until one year has elapsed from the expiration of the term for which the member was appointed, whichever occurs first. Vacancies occurring prior to the expiration of the term shall be filled by appointment for the remainder of the unexpired term.

Each appointment shall be for a four-year term expiring June 1 of the fourth year following the year in which the previous term expired. No person shall serve as a member of the board for more than two consecutive terms.

The Governor shall appoint three of the public members and the three members qualified as provided in Section 7811. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies that occurred on or after January 1, 1983.

At the time the first vacancy is created by the expiration of the term of a public member appointed by the Governor, the board shall be reduced to consist of seven members, four of whom shall be public members, two of

whom shall be geologists, and one of whom shall be a geophysicist. Notwithstanding any other provision of law, the term of that member shall not be extended for any reason, except as provided in this section.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 11. Section 7815.5 of the Business and Professions Code is amended to read:

7815.5. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 12. Section 7830.1 of the Business and Professions Code is amended to read:

7830.1. After one year following the effective date of this section, it shall be unlawful for anyone other than a geophysicist registered under this chapter to stamp or seal any plans, specifications, plats, reports, or other documents with the seal or stamp of a registered geophysicist, professional geophysicist, or registered certified specialty geophysicist, or to use in any manner the title “registered geophysicist,” “professional geophysicist,” or the title of any registered certified specialty geophysicist unless registered, or registered and certified, under this chapter.

SEC. 13. Section 7833 of the Business and Professions Code is amended to read:

7833. This chapter does not prohibit one or more geologists or geophysicists from practicing through the entity of a sole proprietorship, partnership, or corporation. In a partnership or corporation whose primary activity consists of geological services, at least one partner or officer shall be a professional geologist. In a partnership or corporation whose primary activity consists of geophysical services, at least one partner or officer shall be a professional geophysicist.

SEC. 14. Section 7835.1 of the Business and Professions Code is amended to read:

7835.1. All geophysical plans, specifications, reports, or documents shall be prepared by a professional geophysicist, registered certified specialty geophysicist, professional geologist, registered certified specialty geologist, or by a subordinate employee under his or her direction. In addition, they shall be signed by the professional geophysicist, registered certified specialty geophysicist, professional geologist, or registered

certified specialty geologist, or stamped with his or her seal, either of which shall indicate his or her responsibility for them.

SEC. 15. Section 7837 of the Business and Professions Code is amended to read:

7837. A subordinate to a geologist or geophysicist registered under this chapter, insofar as he or she acts solely in that capacity, is exempt from registration under the provisions of this chapter. This exemption, however, does not permit any subordinate to practice geology or geophysics for others in his or her own right or to use the title “professional geologist” or “professional geophysicist.”

SEC. 16. Section 7841.1 of the Business and Professions Code is amended to read:

7841.1. An applicant for registration as a geophysicist shall have all of the following qualifications. This section shall not apply to applicants for registration as geologists.

(a) Not have committed any acts or crimes constituting grounds for denial of licensure under Section 480.

(b) Meet one of the following educational requirements fulfilled at a school or university whose curricula meet criteria established by rules of the board.

(1) Graduation with a major in a geophysical science or any other discipline which in the opinion of the board is relevant to geophysics.

(2) Completion of a combination of at least 30 semester hours, in courses which in the opinion of the board are relevant to geophysics. At least 24 semester hours, or the equivalent, shall be in the third or fourth year, or graduate courses.

(c) Have at least seven years of professional geophysical work which shall include either a minimum of three years of professional geophysical work under the supervision of a professional geophysicist, except that prior to July 1, 1973, professional geophysical work shall qualify under this subdivision if it is under the supervision of a qualified geophysicist, or a minimum of five years’ experience in responsible charge of professional geophysical work. Professional geophysical work does not include the routine maintenance or operation of geophysical instruments, or, even if carried out under the responsible supervision of a professional geophysicist, the routine reduction or plotting of geophysical observations.

Each year of undergraduate study in the geophysical sciences referred to in this section shall count as one-half year of training up to a maximum of two years, and each year of graduate study or research counts as a year of training.

Teaching in the geophysical sciences referred to in this section at a college level shall be credited year for year toward meeting the requirement in this category, provided that the total teaching experience includes six semester units per semester, or equivalent if on the quarter system, of third or fourth year or graduate courses.

Credit for undergraduate study, graduate study, and teaching, individually, or in any combination thereof, shall in no case exceed a total

of four years towards meeting the requirements for at least seven years of professional geophysical work as set forth above.

The ability of the applicant shall have been demonstrated by his or her having performed the work in a responsible position, as the term “responsible position” is defined in regulations adopted by the board. The adequacy of the required supervision and experience shall be determined by the board in accordance with standards set forth in regulations adopted by it.

(d) Successfully pass a written examination.

SEC. 17. Section 7850 of the Business and Professions Code is amended to read:

7850. Any applicant who has passed the examination and has otherwise qualified hereunder as a geologist, upon payment of the registration fee fixed by this chapter shall have a certificate of registration issued to him or her as a professional geologist.

SEC. 18. Section 7850.1 of the Business and Professions Code is amended to read:

7850.1. Any applicant who has passed the examination and has otherwise qualified hereunder as a geophysicist, upon payment of the registration fee fixed by this chapter shall have a certificate of registration issued to him or her as a professional geophysicist.

SEC. 19. Section 7852.1 of the Business and Professions Code is amended to read:

7852.1. (a) Each geophysicist registered under this chapter may, upon registration, obtain a seal of the design authorized by the board bearing the registrant’s name, number of his or her certificate, and the legend “professional geophysicist.”

(b) Each specialty geophysicist certified under this chapter may, upon certification, obtain a seal of the design authorized by the board bearing the registrant’s name, number of his or her certificate and the legend “certified specialty geophysicist.”

SEC. 20. Section 7872 of the Business and Professions Code is amended to read:

7872. Every person is guilty of a misdemeanor and for each offense of which he or she is convicted is punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment not to exceed three months, or by both fine and imprisonment:

(a) Who, unless he or she is exempt from registration under this chapter, practices or offers to practice geology or geophysics for others in this state according to the provisions of this chapter without legal authorization.

(b) Who presents or attempts to file as his or her own the certificate of registration of another.

(c) Who gives false evidence of any kind to the board, or to any member thereof, in obtaining a certificate of registration.

(d) Who impersonates or uses the seal of any other practitioner.

(e) Who uses an expired or revoked certificate of registration.

(f) Who shall represent himself or herself as, or use the title of, professional geologist, or any other title whereby the person could be considered as practicing or offering to practice geology for others, unless he or she is qualified by registration as a geologist under this chapter, or who shall represent himself or herself as, or use the title of, professional geophysicist, or any other title whereby the person could be considered as practicing or offering to practice geophysics for others, unless he or she is qualified by registration as a geophysicist under this chapter.

(g) Who manages, or conducts as manager, proprietor, or agent, any place of business from which geological or geophysical work is solicited, performed or practiced for others, unless the geological work is supervised or performed by a professional geologist, or unless the geophysical work is supervised or performed by a professional geophysicist or geologist.

(h) Who violates any provision of this chapter.

SEC. 21. Section 8710 of the Business and Professions Code is amended to read:

8710. (a) The Board for Professional Engineers and Land Surveyors is vested with power to administer the provisions and requirements of this chapter, and may make and enforce rules and regulations that are reasonably necessary to carry out its provisions.

(b) The board may adopt rules and regulations of professional conduct that are not inconsistent with state and federal law. The rules and regulations may include definitions of incompetence and negligence. Every person who holds a license or certificate issued by the board pursuant to this chapter, or a license or certificate issued to a civil engineer pursuant to Chapter 7 (commencing with Section 6700), shall be governed by these rules and regulations.

(c) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section shall render the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 22. Section 8741 of the Business and Professions Code is amended to read:

8741. (a) The first division of the examination shall test the applicant's fundamental knowledge of surveying, mathematics, and basic science. The board may prescribe by regulation reasonable educational or experience requirements including two years of postsecondary education in land surveying, two years of experience in land surveying, or a combination of postsecondary education and experience in land surveying totaling two years for admission to the first division of the examination. Applicants who have passed the engineer-in-training examination, or who hold professional engineer registration, are exempt from this division of the examination.

The second division of the examination shall test the applicant's ability to apply his or her knowledge and experience and to assume responsible charge in the professional practice of land surveying.

(b) The applicant for the second division examination shall have successfully passed the first division examination, or shall be exempt therefrom. The applicant shall be thoroughly familiar with (1) the procedure and rules governing the survey of public lands as set forth in "Manual of Surveying Instructions," published by the Bureau of Land Management, Department of the Interior, Washington, D.C. and (2) the principles of real property relating to boundaries and conveyancing.

(c) The board may by rule provide for a waiver of the first division of the examination for applicants whose education and experience qualifications substantially exceed the requirements of Section 8742.

(d) The board may by rule provide for a waiver of the second division of the examination and the assignment to a special examination for those applicants whose educational qualifications are equal to, and whose experience qualifications substantially exceed, those qualifications established under subdivision (c). The special examination may be either written or oral, or a combination of both.

SEC. 23. Section 8741.1 of the Business and Professions Code is amended to read:

8741.1. The second division of the examination for licensure as a land surveyor shall include an examination that incorporates a national examination for land surveying by a nationally recognized entity approved by the board, and a supplemental California specific examination. The California specific examination shall test the applicant's knowledge of the provisions of this chapter and the board's rules and regulations regulating the practice of professional land surveying in this state.

The board shall use the national examination on or before June 1, 2003. In the meantime, the board may continue to provide the current state-only second division examination and administer the test on the provisions of this chapter and board rules as a separate part of the second division examination for licensure as a land surveyor.

SEC. 24. Section 8753 of the Business and Professions Code is repealed.

SEC. 25. Section 8761 of the Business and Professions Code is amended to read:

8761. (a) Any licensed land surveyor or civil engineer authorized to practice land surveying may practice land surveying and prepare maps, plats, reports, descriptions, or other documentary evidence in connection with that practice. All maps, plats, reports, descriptions, or other documents shall be prepared by, or under the responsible charge of a licensed land surveyor or civil engineer authorized to practice land surveying and shall include his or her name and license number. If the document has multiple pages or sheets, the signature, the seal or stamp, date of signing and sealing or stamping, and expiration date of the license

shall appear, at a minimum, on the title sheet, cover sheet or page, or signature sheet.

(b) Interim maps, plats, reports, descriptions, or other documents shall include a notation as to the intended purpose of the map, plat, report, description, or other document, such as “preliminary” or “for examination only.”

(c) All final maps, plats, reports, descriptions, or other documents issued by a licensed land surveyor or civil engineer authorized to practice land surveying shall bear the signature and seal or stamp of the licensee, the date of signing and sealing or stamping, and the expiration date of the license.

(d) It is unlawful for any person to sign, stamp, seal, or approve any map, plat, report, description, or other document unless the person is authorized to practice land surveying.

(e) It is unlawful for any person to stamp or seal any map, plat, report, description, or other document with the seal after the certificate of the licensee that is named on the seal has expired or has been suspended or revoked, unless the certificate has been renewed or reissued.

SEC. 26. Section 8764 of the Business and Professions Code is amended to read:

8764. The record of survey shall show the applicable provisions of the following consistent with the purpose of the survey:

(a) All monuments found, set, reset, replaced, or removed, describing their kind, size, and location, and giving other data relating thereto.

(b) Bearing or witness monuments, basis of bearings, bearing and length of lines, scale of map, and north arrow.

(c) Name and legal designation of the property in which the survey is located, and the date or time period of the survey.

(d) The relationship to those portions of adjacent tracts, streets, or senior conveyances which have common lines with the survey.

(e) Memorandum of oaths.

(f) Statements required by Section 8764.5.

(g) Any other data necessary for the intelligent interpretation of the various items and locations of the points, lines, and areas shown, or convenient for the identification of the survey or surveyor, as may be determined by the civil engineer or land surveyor preparing the record of survey.

The record of survey shall also show, either graphically or by note, the reason or reasons, if any, why the mandatory filing provisions of paragraphs (1) to (5), inclusive, of subdivision (b) of Section 8762 apply.

The record of survey need not consist of a survey of an entire property.

SEC. 27. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the

definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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